

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1175 OF 2005

Sindhubai Baban Ranawade & ors. ... Appellants

V/s

Prem Ratan Gupta & ors. ... Respondents

Mr. S.A. Sawant for the appellants.

Mr. S.M. Gorwadkar for the Respondent No.1.

CORAM: P.V. KAKADE, J.

DATED: 3TH OCT., 2005

P.C.:

1. Heard learned counsel for both parties.

2. In this regard it must be noted that the Second Appeal No. 591 of 2004 which came to be heard and adjudicated and disposed of by order dated 15.6.2005 was also the appeal arising out of the common judgment passed by the lower appellate Court wherefrom the present appeal arises. Copy of the order dated 15.6.2005 is provided for my perusal and it shows that the issues involved in the said appeal are the issues also to be adjudicated in the present Second Appeal No.

1175 of 2005 and, therefore, those issues cannot be agitated again when Second Appeal No. 591 of 2004 is adjudicated on merits. It is submitted on behalf of the appellant that independent suit is pending in the Trial Court for partitions of other sharers and, therefore, this appeal also should be adjudicated on merits. However, it is to be noted that, all the issues involved in the present dispute are settled by order dated 15.6.2004 and, therefore, considering the present appeal on merits would amount to reopening of the said order already passed in Second Appeal No. 591 of 2004 which cannot be done in law.

3. In view of this position, Second Appeal No. 1175 of 2005 also stands dismissed with no order as to costs. Consequently, Civil Application No. 1809 of 2004 also stands dismissed with no order as to costs.

4. It is clarified that the independent remedy which is already availed of by the present appellant, shall be determined independently without being influenced from this order by the concerned Court and shall be disposed of in accordance with law.

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